

AMENDED IN ASSEMBLY MAY 6, 2013

AMENDED IN ASSEMBLY APRIL 15, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 477

Introduced by Assembly Member Chau

February 19, 2013

An act to amend Section 15630.1 of the Welfare and Institutions Code, relating to elder and dependent adult abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 477, as amended, Chau. Elder and dependent adult abuse: mandated reporting.

Existing law, the Financial Elder Abuse Reporting Act of 2005, establishes procedures for the reporting of suspected financial abuse of an elder or dependent adult, as defined. These procedures require mandated reporters of suspected financial abuse of an elder or dependent adult, as defined, to report known or suspected instances of financial abuse of an elder or dependent adult, as specified. Existing law makes a violation of the reporting requirements subject to a civil penalty.

This bill would include notaries public in the definition of mandated reporters of suspected financial abuse of an elder or dependent adult and would require a notary public, *except as provided*, to report known or suspected instances of financial abuse of an elder or dependent adult if the notary public has observed or has knowledge of suspected financial abuse in connection with providing notary services.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 15630.1 of the Welfare and Institutions
2 Code is amended to read:

3 15630.1. (a) As used in this section, “mandated reporter of
4 suspected financial abuse of an elder or dependent adult” or
5 “*mandated reporter*” means all officers and employees of financial
6 institutions and notaries public.

7 (b) As used in this section, the term “financial institution” means
8 any of the following:

9 (1) A depository institution, as defined in Section 3(c) of the
10 Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(c)).

11 (2) An institution-affiliated party, as defined in Section 3(u) of
12 the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(u)).

13 (3) A federal credit union or state credit union, as defined in
14 Section 101 of the Federal Credit Union Act (12 U.S.C. Sec. 1752),
15 including, but not limited to, an institution-affiliated party of a
16 credit union, as defined in Section 206(r) of the Federal Credit
17 Union Act (12 U.S.C. Sec. 1786(r)).

18 (c) As used in this section, “financial abuse” has the same
19 meaning as in Section 15610.30.

20 (d) (1) Any officer or employee of a financial institution who
21 has direct contact with the elder or dependent adult or who reviews
22 or approves the elder or dependent adult’s financial documents,
23 records, or transactions, in connection with providing financial
24 services with respect to an elder or dependent adult, and who,
25 within the scope of his or her employment or professional practice,
26 has observed or has knowledge of an incident, that is directly
27 related to the transaction or matter that is within that scope of
28 employment or professional practice, that reasonably appears to
29 be financial abuse, or who reasonably suspects that abuse, based
30 solely on the information before him or her at the time of reviewing
31 or approving the document, record, or transaction in the case of
32 mandated reporters who do not have direct contact with the elder
33 or dependent adult, shall report the known or suspected instance
34 of financial abuse by telephone or through a confidential Internet
35 reporting tool, as authorized pursuant to Section 15658,
36 immediately, or as soon as practicably possible. If reported by
37 telephone, a written report shall be sent, or an Internet report shall
38 be made through the confidential Internet reporting tool established

1 in Section 15658, within two working days to the local adult
2 protective services agency or the local law enforcement agency.

3 (2) (A) Any notary public who, in connection with providing
4 notary services, has observed or has knowledge of suspected
5 financial abuse of an elder or dependent adult shall report the
6 known or suspected instance of financial abuse by telephone or
7 through a confidential Internet reporting tool, as authorized
8 pursuant to Section 15658, immediately, or as soon as practicably
9 possible. If reported by telephone, a written report shall be sent,
10 or an Internet report shall be made through the confidential Internet
11 reporting tool established in Section 15658, within two working
12 days to the local adult protective services agency or the local law
13 enforcement agency.

14 (B) *A notary public who is also an officer or employee of a*
15 *financial institution is subject to the reporting requirement under*
16 *paragraph (1) and not the reporting requirement under this*
17 *paragraph.*

18 (C) *The requirement of a notary public to report suspected*
19 *financial abuse of an elder or dependent adult pursuant to this*
20 *paragraph does not apply if the information to be reported is*
21 *protected from disclosure by the attorney-client privilege or the*
22 *notary public is subject to the duty under paragraph (1) of*
23 *subdivision (e) of Section 6068 of the Business and Professions*
24 *Code.*

25 (3) When two or more mandated reporters jointly have
26 knowledge or reasonably suspect that financial abuse of an elder
27 or a dependent adult for which the report is mandated has occurred,
28 and when there is an agreement among them, the telephone report
29 or Internet report, as authorized by Section 15658, may be made
30 by a member of the reporting team who is selected by mutual
31 agreement. A single report may be made and signed by the selected
32 member of the reporting team. Any member of the team who has
33 knowledge that the member designated to report has failed to do
34 so shall thereafter make that report.

35 (4) If the mandated reporter knows that the elder or dependent
36 adult resides in a long-term care facility, as defined in Section
37 15610.47, the report shall be made to the local ombudsman or local
38 law enforcement agency.

39 (e) An allegation by the elder or dependent adult, or any other
40 person, that financial abuse has occurred is not sufficient to trigger

1 the reporting requirement under this section if both of the following
2 conditions are met:

3 (1) The mandated reporter of suspected financial abuse of an
4 elder or dependent adult is aware of no other corroborating or
5 independent evidence of the alleged financial abuse of an elder or
6 dependent adult. The mandated reporter of suspected financial
7 abuse of an elder or dependent adult is not required to investigate
8 any accusations.

9 (2) In the exercise of his or her professional judgment, the
10 mandated reporter of suspected financial abuse of an elder or
11 dependent adult reasonably believes that financial abuse of an
12 elder or dependent adult did not occur.

13 (f) Failure to report financial abuse under this section shall be
14 subject to a civil penalty not exceeding one thousand dollars
15 (\$1,000) or if the failure to report is willful, a civil penalty not
16 exceeding five thousand dollars (\$5,000), which shall be paid by
17 the financial institution that is the employer of the mandated
18 reporter or the notary public to the party bringing the action.
19 Subdivision (h) of Section 15630 shall not apply to violations of
20 this section.

21 (g) (1) The civil penalty provided for in subdivision (f) shall
22 be recovered only in a civil action brought against the financial
23 institution or the notary public by the Attorney General, district
24 attorney, or county counsel. No action shall be brought under this
25 section by any person other than the Attorney General, district
26 attorney, or county counsel. Multiple actions for the civil penalty
27 may not be brought for the same violation.

28 (2) Nothing in the Financial Elder Abuse Reporting Act of 2005
29 shall be construed to limit, expand, or otherwise modify any civil
30 liability or remedy that may exist under this or any other law.

31 (h) As used in this section, “suspected financial abuse of an
32 elder or dependent adult” occurs when a person who is required
33 to report under subdivision (a) observes or has knowledge of
34 behavior or unusual circumstances or transactions, or a pattern of
35 behavior or unusual circumstances or transactions, that would lead
36 an individual with like training or experience, based on the same
37 facts, to form a reasonable belief that an elder or dependent adult
38 is the victim of financial abuse as defined in Section 15610.30.

39 (i) Reports of suspected financial abuse of an elder or dependent
40 adult made by an employee or officer of a financial institution

1 pursuant to this section are covered under subdivision (b) of Section
2 47 of the Civil Code.

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